

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**CONTRACT FOR BOOKING AGENT SERVICES
BETWEEN FUN2REF AND THE CITY OF DURHAM**

This contract is made and entered into as of the _____, 2013 by the City of Durham ("City" or "Owner") and Lynn and Dan Dunbar, doing business as Fun2Ref ("Contractor"), a sole proprietorship.

Sec. 1. Background and Purpose. The Contractor was chosen by the City after publication of a Request for Proposals and evaluation of the bids received. Contractor shall provide athletic official booking agency services for various athletic leagues and programs in accordance with the terms of this Contract.

Sec. 2. Scope of Services to be Performed. The Contractor shall provide the tasks described in this Contract, which are hereafter referred to as the "Work,"

- a. Contractor agrees that officials for adult soccer and youth soccer must hold a current certification from the U. S. Soccer Federation (USSF). Officials working one-person systems in youth soccer should have a minimum two (2) years' experience as a referee with a minimum Grade 8 USSF certification. For adult soccer matches, all referees must be a minimum Grade 8 USSF certification with a minimum 2 years' experience for the center referee. Contractor will schedule soccer officials to work no more than four (4) matches per day unless there are extenuating circumstances and the City is notified prior to the start of any game/matches.
- b. Contractor agrees to provide Adult Softball Non Sanctioned and Adult Volleyball that are Amateur Athletic Union (AAU) or North Carolina High School Athletic Association (NCHSAA) certified and qualified to officiate softball games and volleyball matches.
- c. All officials will have regular annual training and annual certification from the USSF, AAU or NCHSAA.
- d. All officials will follow USSF, AAU or NCHSAA disciplinary and dress codes.
- e. The contractor will submit the schedule of officials five (5) business days prior to work.
- f. The contractor will evaluate the officials weekly and submit written evaluation within five (5) business days of the evaluation.

Sec. 3. City's Responsibilities. The Contractor may rely upon the following responsibilities being fulfilled or supplied by the City (through the Department of Parks and Recreation, DPR) or its representative:

The City is responsible for fulfilling these responsibilities on time, according to the seasonal schedule. Should the City fulfill these responsibilities substantially on time, with

Contractor's performance not being delayed in fact by the City's performance, the City shall be considered to have complied with this contract term.

The City is responsible for approving, in writing, a draft schedule of officials provided by the Contractor before the final schedule will be authorized. Such written approval by the City constitutes the City's acceptance of the draft schedule.

Sec. 4. Complete Work without Extra Cost. Except to the extent specifically authorized in Sec. 5, Compensation, the City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation unless previously authorized by the City.

Sec. 5. Compensation.

- a. The City shall pay the Contractor for completion of the Work as set forth below. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. If costs and/or delivery dates change because the City or its representatives have not provided timely feedback or because the City changes the agreed-upon scope of work, the Contractor will inform the City about these changes and will obtain approval before continuation.
- b. Payment for each portion of the Contractor's performance shall be as shown as below:

Sport	Number of officials per match/game	Number of matches/games	Fee per match/game including booking fee	Total fee per sport/league /tournament/event
Softball (5+)	2	467	\$52.00	\$24,284.00
Volleyball (17+)	1	85	\$35.00	\$2,975.00
Adult Soccer (17+)	3	82	\$160.00	\$13,120.00
Adult Soccer (30+)	2	82	\$107.00	\$8,774.00
Girls Soccer (7-8)	1	48	\$31.00	\$1,488.00
Girls Soccer (9-10)	1	48	\$31.00	\$1,488.00
Girls Soccer (11-13)	2	64	\$65.00	\$4,160.00
Grand Total Administrative & Booking Fee:				\$56,289.00

- c. Compensation for general liability and accident insurance for all officials assigned to City events for the period between July 1, 2013 and August 15, 2014 for sixty

(60) officials covered to be verified by copy of insurance certificate. Total compensation for liability and accident insurance shall not exceed **\$600.00**.

- d. Compensation for workers' compensation insurance for all officials assigned to City events for the period between July 1, 2012 and August 15, 2014 for sixty (60) officials covered, to be verified by copy of insurance certificate, shall not exceed **\$1,200.00**.

e. **Business License Reimbursement:** **Total: \$75.00**

Total: \$1,875.00

- f. Cancellation and compensation; The city reserves the right to cancel any and all games/matches per the following:
1. **Finals/If Games:** Paid at the normal game rate plus \$5.00 per official.
 2. **Single Games:** Weekday Single games are billed at one and half times the normal game fee rate. Weekend Single games are billed at two times the normal game fee rate.
Optionally – Booking agent reserves the right to not provide an official for single weekend games.
 3. **Canceled Games** if games are canceled due to weather conditions/unforeseen cause and fall within the timeframe billing will be invoiced according to:
 - Within a two hour notice of first scheduled game – Booking fee is due. No game fee is due.
 - Less than a two hour notice of first scheduled game – Booking Fee along with one and a half game fees.
 - 15 minutes or less from game time – Booking Fee along with one and a half game fee.
 4. **Suspended/Abandoned Game** – Game was started but not completed. Full game fee is due including booking fee.
 5. **Forfeited Game** –
 - With more than a two hour notice of first scheduled game - No game fee, booking fee is due.
 - Less than a two hour notice of first scheduled game – Full booking fee along with one game fee.
 6. **No Show** – If only 1 umpire/referee shows up for a game that requires 2 or more referees/umpires only the total game fee and booking fee will be paid.

The below chart reflects on the amount of booking fee for each sport:

Softball 5 & U	\$6.00
Volleyball (17 & U	\$5.00
Adult Soccer (17 & U)	\$10.00
Adult Soccer (30+)	\$7.00
Girls Soccer (7 – 8)	\$5.00
Girls Soccer (9-10)	\$5.00
Girls Soccer (11 – 13)	\$5.00

- g. The Contractor and the City agree that the City may schedule new tournaments or events or additional league play during the period of this Contract, in any of the sports noted in Section 5.b. above; that the Contractor shall have the right to accept or decline that work; and that if the Contractor accepts the work, the rate of pay for officials and the booking and administrative fees shall be the same as the fees for those sports noted in that same section.

**Total Contract amount with all fees and insurance compensation shall not exceed:
\$58,164.00**

Sec. 6. Contractor's Billings to City. The Contractor shall send invoices to the City according to the following schedule:

Contractor may invoice bi-weekly for costs for officials and at the start of each season for a booking fee. Each invoice shall document in detail the Work performed, the dates performed, the person(s) performing the Work, invoice number and such other information as may be reasonably requested by the City. Each submitted invoice must have a completed City of Durham Subcontractor Record of Payment Report attached. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice. If there are questions regarding the amount, adequacy, or quality of the Work, whether the Work was actually performed, and/or whether the Work performed conformed to the requirements of this contract the City may withhold the amount of such payments as appears to be in question, pending resolution.

Sec. 7. Prompt Payment to Subcontractors. (a) Within seven (7) days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes sub-consultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than seven (7) days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the eighth (8th) day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection

(a) Directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this

section, titled "Prompt Payment to Subcontractors," he or she will be referred to as the "Project Manager") determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) The amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) The amounts past-due under subsection (a) to the Subcontractor but not exceeding five percent (5%) of the payment(s) due from the City to the Contractor.

This subsection:

- a) Does not limit any other rights to withhold payments that the City may have.
- b) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Contractor at the time of invoicing, application, and certification to the City
- c) from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.
- d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 8. Insurance. Contractor shall obtain and keep in force, during this Contract, such Insurance as is specified by the City. Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate of not less than \$2,000,000

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners, partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000.
- Waiver of subrogation in favor of the City of Durham

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A-, VII or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:

**City of Durham, North Carolina
101 City Hall Plaza
Durham, NC 27701
Attention: Durham Parks and Recreation Department**

- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

Sec. 9. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the terms of this Contract, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 10. Attachments. There are no attachments to this contract.

Sec. 11. (a) Notice. All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Tammy Brown, Recreation Manager
Department of Parks and Recreation
101 City Hall Plaza
Durham, NC 27701
The fax number is (919) 560-4021

To the Contractor:

Fun2Ref
Lynn Dunbar
1105 Infinity Rd.
Durham, NC 27712
The phone number is (919) 475-3851

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 12. Indemnification.

(a) *Hold Harmless.* To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or his subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) *Definitions.* As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules or orders--including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent Contractors, agents, and employees, excluding the Contractor.

(c) *Other Provisions Separate.* Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) *Survival.* This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) *Limitations of the Contractor's Obligation.* If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a"

above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 13. Miscellaneous

(a) *Choice of Law and Forum.* This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section

(a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) *Waiver.* No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) *Performance of Government Functions.* Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) *Severability.* If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) *Assignment. Subcontractors. Successors and Assigns.* Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) *Compliance with Law.* In performing all of the Work, the Contractor shall comply with all applicable law.

(g) *City Policy.* THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) *EEO Provisions.* During the performance of this Contract the Contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take

affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions.

- (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
 - (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding.
 - (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor's ineligible for further City contracts.
 - (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions shall be binding upon such sub-Contractors and vendors.
- (i) *SDBE*. The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (the Equal Business Opportunity ordinance, as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The final version of all SDBE documents and information submitted by the Contractor and approved by the City of Durham are a legal and binding part of this contract.
- (j) *No Third Party Rights Created*. This contract is intended for the benefit of the City and the Contractor and not any other person.
- (k) *Principles of Interpretation and Definitions*. In this contract, unless the context requires otherwise:
- (1) the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation.

- (2) References to a "Section" or "section" shall mean a section of this contract.
 - (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument.
 - (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract.
 - (5) "Duties" includes obligations.
 - (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities.
 - (7) The word "shall" is mandatory.
 - (8) The word "day" means calendar day.
- (m) *Modifications. Entire Agreement.* A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

Sec. 14. Termination or Suspension. To the extent, if any, that the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by the City Manager or a deputy or assistant City Manager without City Council action. If the contract is terminated, the City will pay for work completed prior to the termination, plus approved and documentable additional charges. If the contract is suspended for a period longer than six months and is subsequently reactivated, the Contractor and the City shall, prior to reactivation, agree upon a lump sum or basis of reimbursement to the Contractor for any extra costs occasioned as a result of the work's having been suspended.

Sec. 15. Ownership of Documents. All reports, maps, and other deliverables prepared pursuant to this Agreement shall be owned by the City of Durham. Grant of any license is conditioned on receipt of full payment to the Contractor by the City. All deliverables shall be delivered to City upon final payment made to Contractor. In case of modification or reuse of the Contract Documents by the City, the Contractor's name shall be removed from the documents, and the Contractor shall not be liable to the City or third parties for their modification or reuse. After thirty (30) days past the completion of the project or termination of the contract, the City will be responsible for any costs incurred by the Contractor to retrieve artwork, electronic files, or other documents associated with the project at the City's request. The Contractor retains the right to use the work products for promotional and educational purposes.

Sec. 16. Conflict of Interest. Contractor agrees that it has no interest and shall acquire no interest, direct or indirect, that would conflict in any manner with the

performance of the services hereunder. Contractor further agrees that, in the performance of this Agreement, no person having any such interest shall be employed.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

ATTEST:

Clerk

By: _____
Thomas J. Bonfield, City Manager

BOOKING AGENT

Lynn Dunbar
Fun2Ref

Dan Dunbar
Fun2Ref

State of _____

County of Durham

I, a notary public in and for the aforesaid county and state, certify that

_____, trading as Fun2Ref, personally appeared before me this day and acknowledged the execution, under seal, of the foregoing contract or agreement with the City of Durham. This the _____ day of _____, 2013.

My commission expires:

Notary Public